

# WASHINGTON STATE GAMBLING COMMISSION

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## MINUTES COMMISSION MEETING THURSDAY, JANUARY 8, 1998

**Commissioner McLaughlin** called the meeting to order at 1:30 p.m. at the Skamania Lodge, Stevenson, Washington.

**MEMBERS PRESENT:** LIZ McLAUGHLIN, Vice Chair; EDWARD HEAVEY, MARSHALL FORREST, and PATRICIA L. HERBOLD; and Ex Officio Members SENATOR MARGARITA PRENTICE and SENATOR RAY SCHOW

**OTHERS PRESENT:** BEN BISHOP, Executive Director;  
SHERRI WINSLOW, Division Director, Field Operations;  
CALLY CASS-HEALY, Division Director, Licensing Operations;  
CARRIE TELLEFSON, Division Director, Policy, Planning and Support;  
DERRY FRIES, Division Director, Special Operations;  
JONATHAN McCOY, Assistant Attorney General; and  
SUSAN GREEN, Executive Assistant

**Commissioner McLaughlin** said she would be the acting chairperson today, since Commissioner Ludwig could not be present. He will be at tomorrow's meeting. She introduced the Washington State Gambling Commission (WSGC) staff and Commission members present. She said Senator Prentice is expected to arrive shortly.

### STAFF REPORT

#### **CARD ROOM ENHANCEMENT PROGRAM UPDATE** **Sherri Winslow, Division Director, Field Operations**

**Ms. Winslow** said the staff prepared this report to review the standards required for the tribal casinos, for Appendix C licensees, and for those licensees who have fewer activities. The standards under Appendix C are the same as those required for tribal casinos. Many of the licensees expressed an interest in the house-banking program and they were interested in limited scope gaming. With that in mind, the staff analyzed Appendix C and determined that some of the control procedures were not appropriate for those licensees with less than five tables or with wagering limits of \$5 or less. The level of risk in allowing them to conduct house-banked games with reduced controls is lower than that for full-scale gaming. This limited scope gaming is allowed for what they refer to as Level I operators. These operators are allowed up to four tables of house-banked games with wagering limits of \$5 or less. With these restrictions in mind, the staff believes the risk is reduced dramatically.

**Ms. Winslow** said a strong system of internal controls is required for these operations to function properly. The staff has slightly reduced the requirements in the areas of personnel and floor operations within the facility. These reductions were also made with the idea that the owner is likely to take a very active role in the operation of the card room because of its small size, to protect their investment, and reduce the labor cost. She said that specific areas where risk levels are reduced due to the limited scope of gaming for Level I operators include the lowering of the wagering limits, the limited hours of operation, and the reduced number of cash transactions that will occur. Overall, there's going to be less cash circulating through the business because the wagering limits are at a lower level.

**Ms. Winslow** said that the areas within Appendix C that were modified without substantially increasing the risk are included in the packet that was just handed out to the Commission. The staff refers to these as the minimum standards, which was handed out to the licensees and the house-banked test participants who are interested in the level lower activity. The first area that is covered throughout is personnel. Level I operators are allowed to have individuals serve dual functions in the personnel area. They're not required to have separate security,

gaming operation or accounting departments; however, they must have separate functions performed by independent persons. The staff felt that because of the smaller operation and the owner oversight that this was justified. The next area, which is on page eight, covers the surveillance area. Level I operators will be required to have fixed cameras on each gaming station, the cage area, and the area where the money is being counted each day. However, they are not required to have cameras with pan tilt zoom capabilities and they would only be required to review their dealer's activities on a weekly basis as opposed to a daily basis.

**Ms. Winslow** said that the next change, which can be found on page 11 of the handout, is in the cashier's cage area. The staff has allowed Level I operators to not fully enclose or lock up their cage area and have a silent alarm system. They are still going to ask for alternative controls. However, with the limited activity and the smaller operation, they felt this was an area that could have some reductions. On page 18 of the handout, the staff has reduced controls on blackjack tables by allowing Level I operators to not have locked containers on their tables if they choose to store their chip inventory in a locked area within the card room. That would only be when there's no gaming activity occurring, because obviously they would have them on the table when they are playing. On page 25 are the shift change requirements for Level I operators. They can elect not to perform these functions if they remove the drop boxes only once a day at the end of the gaming day and all movements are recorded on the video. The staff felt this was acceptable because there are lower volumes of activity. They're only going to drop the boxes once a day if the volumes are that light anyway. She said that in the count room procedures area on page 27, Level I operators can elect not to have a separate count room if the contents of the drop boxes are counted at the table and recorded by the surveillance systems. That was also allowed because of the reduced level of risk and fewer transactions taking place in a smaller operation.

**Ms. Winslow** said those were the basic changes. She emphasized that Appendix C and the majority of the tribal-state compacts had the same level of standards. There is a reduced level of standards for the Level I operators at this point in time and they have not had a licensee come forward for a Level I operation. She feels that is primarily due to the fact that very few operators want to get involved with this activity unless they can have wagering limits of up to \$25.

**Commissioner Forrest** said he assumed that the size and complexity of the tribal operations would exclude them from Level I. **Ms. Winslow** said that was correct. **Commissioner Forrest** also wanted to know if Ms. Winslow thought that the Commission should use any special caution in this to alert people who might apply that this is somewhat experimental. He suggested giving them kind of a double warning that if problems develop during the administration of this program, that the rules may change. **Ms. Winslow** said they had been very cautious in this particular area and have let licensees in the test know that things will change. The whole purpose of the test is to determine what works, what doesn't work, some of the things that they have currently in the control system with which they are very comfortable, but which they might want to enhance in the future. With some of these things, the licensees asked for additional controls and they're not covered so they do them on their own. It has been a very good working situation with the licensee groups.

**Commissioner McLaughlin** asked if there were any other questions and there were none. She welcomed Senator Margarita Prentice, who just arrived.

## **LICENSE APPROVALS**

### **NEW LICENSES, CHANGES, WITHDRAWALS AND TRIBAL CERTIFICATIONS**

**Commissioner Herbold** moved that the Commission approve the new licenses, changes, withdrawals, and tribal certifications. **Commissioner Forrest** seconded the motion.

**Commissioner Forrest** referred to page 37 and asked about the charitable gambling manager, Sandra Nelson, who was reinstated. He asked someone to explain that. **Ms. Cass-Healy** said that a reinstatement is a grace period if somebody forgets to renew their license. The agency gives them 90 days to send in the fee and will reinstate it without penalty or without a new investigation.

*Vote taken; motion carried with four aye votes.*

**Director Bishop** said there were a total of 105 card room employees that they approved under new licensees, which is an increase over normal activity. He said it demonstrates coming into the house-banking arena, which will result in a lot more employees being involved. **Commissioner McLaughlin** said the staff will be busy in the coming months.

## **REVIEW OF FRIDAY'S AGENDA**

**Carrie Tellefson** said tomorrow there will be a presentation by Senator Prentice that she gave before the Senate Commerce and Labor Committee on the proposed 1998 Gambling Task Force. For final action, there will be petition by Dennis Zaborac to amend punchboard/pull tab rules having to do with merchandise prizes and public card room employee rules. She noted on Item 4 that there were a couple of substitutions that were inserted. The staff has made some more wording changes on those rules. Item 5 is the bingo gift certificate merchandise receipt rules that are up for final action. The staff will be asking to hold over Item 4 for discussion one more month because of the changes. For discussion tomorrow there is the interest in a separate business rule and that's listed as a repealer. It is anticipated that that rule will be held over for a few additional months also because they had talked about bringing forth an alternative proposal this month but, due to a lot of different comments from staff and from the industry, their thoughts have not been finalized on which direction to go. The commissioners will be seeing something more on that next month.

**Ms. Tellefson** said that there will be discussion and possible filing of the alternative to the raffle petition that was on the agenda last November. There are a couple of substitutions in the rules packages, and the staff is working on the wording. Item 8 is a housekeeping rule having to do with pricing restrictions on gambling equipment. Item 9 is a petition to amend the raffle rules by Rance Block, but this has been withdrawn by the petitioner. She said there will be one addition to the agenda, Item 10, which actually would be Item 9, on the service supplier rules. There was a discussion this morning in the study group regarding telephone calls on the issue from low-level service suppliers who are simply "dead games" service suppliers questioning whether or not they should be licensed at the same levels and with the same type of background investigation as the higher levels. The staff will be proposing a limited exemption for the "dead games" service suppliers to hold off on actually licensing them until July 1. Director Bishop is in the process of coming with a rule to present to the Commission tomorrow. There have been quite a few calls from both the industry and legislators and the governor's office with concerns on that issue.

**Commissioner McLaughlin** asked if the Director could make that policy decision himself. **Ms. Tellefson** said that would be up to the Commission. She said they had come up with a pretty simple approach to take the rule that's already in existence, delete the section having to do with "dead games" services, storage and counting services, and then add a provision that says they'll be exempted from that part of the rule. The staff didn't want to just hold off the implementation of the entire rule because it's going to be important to implement the rule for those who are actually managing the card rooms and are involved heavily; this was just a cleaner way to approach it.

**Commissioner Forrest** asked if there would be some sort of dollar cut-off; for example, if they have business less than so much, or was the staff going to phrase it in terms of the volume that they do or the kind of work that they do. He wondered just how the line would be drawn.

**Director Bishop** said it would be the type of work. He said his thought pattern now was as long as they aren't involved in management decisions, then that would be lower class. He said they were only doing bookkeeping and storage functions, and it might be said they aren't needed except for the control function. They do have control over the devices and the staff needs to know where they're at. At this point, he said he was thinking about keeping the bookkeeping storage functions as one class and those who wanted to provide the additional management-types services where they were doing reports, determining profitability and dispensing advice, would probably be at the current license level that had been approved in November.

((Senator Schow arrived at this time))

**Commissioner McLaughlin** asked how long the operators have to keep dead games and how does the staff

know when these games have been destroyed and what happened to them. **Ms. Winslow** said the majority of the games were destroyed by the owner actually taking them out to the dump and watching them being bulldozed or they will pour things over the top of them to destroy them so they can't be reused. Most of the operators are very cognizant of the fact that if they throw them in the dumpster behind the establishment, they're going to end up getting forged tickets within a very short period of time, so they don't do that any longer. The commercial operators generally store the games for two months and charitable operators are required to keep them four months.

**Commissioner McLaughlin** introduced Senator Schow, from the Federal Way area, who had just arrived.

**Ms. Tellefson** said there was an executive session scheduled on the agenda, but since Commissioner Ludwig wasn't there, she requested that the executive session be held tomorrow to last about an hour.

**Commissioner McLaughlin** asked if that would be all right with the commissioners; they answered yes.

## **QUALIFICATION REVIEWS**

### **LOYAL ORDER OF MOOSE #1774, Vancouver**

**Ms. Cass-Healy** said this organization was formed in 1957 and their mission is to unite their membership in the bonds of fraternity, benevolence and charity, to assist their families in times of need, and support charitable programs in their communities. The organization is governed by a nine-member board, all of whom are officers, who conducted 24 meetings during the last fiscal year. They have 632 active members with a full-time club administrator and 219 volunteers. The organization operates a Moose Family Center in Vancouver, which is a recreational and social facility. They provide use of this facility free of charge to neighborhood community service organizations. They recently completed the remodel of the Family Center and this has increased the membership and participation. Other charitable and civic services include an in-depth involvement with community-based youth programs and drug abuse resistance education or DARE programs. For the fiscal year ended April 30, 1997, LOOM #1774 satisfied their required combined net return percentage of 12 percent for its Class "J" bingo license. By achieving a 14.9 percent net return, more than 60 percent of the organization's gambling proceeds were spent toward providing program services and supporting services expenses were less than 35 percent of their functional expenses. They did not have excessive reserves.

The staff recommends that this organization be approved as a fraternal organization and authorized to conduct gambling activities in the state of Washington.

**Commissioner McLaughlin** asked if anyone from LOOM #1774 is present. **Ms. Cass-Healy** said they had indicated that there would not be a representative present. **Commissioner McLaughlin** asked how the significant rise in their revenues happened. **Ms. Cass-Healy** said a couple of the Vancouver organizations did better in 1997; however, they attribute this to tightening up a little bit on the expenses. They've let a couple of positions go and didn't replace the people who were in them. Unfortunately, they saw a little bit of downturn in 1997 and don't expect to see improvement. In fact, they downgraded their bingo license this year.

**Commissioner Heavey** moved that LOOM #1774 be approved as a fraternal organization and authorized to conduct gambling in the state of Washington; **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with four aye votes.*

### **SILVER BUCKLE RODEO CLUB, Vancouver**

**Ms. Cass-Healy** said this organization was formed in 1978 and their mission is to encourage and support the participation of youth and equestrian events and studies. The organization has 48 active members and is governed by a board of 7, including 4 officers who conducted 13 meetings during the last fiscal year. They have a full-time executive director and two employees who provide program services. The organization maintains two arenas, livestock barns, a garage and shop and various livestock on a fenced 60-acre parcel in Vancouver. Members encourage youth, ages 6 to 24, to develop equestrian interests through participation in the youth

champion sponsorship scholarship program. Other charitable and civic services are provided indirectly through support of 4-H, the donation of their facilities to local civic groups, and cash contributions to charitable and nonprofit organizations in the community. For the fiscal year ended December 31, 1996, Silver Buckle Rodeo Club met its required combined net return percentage of 12 percent for its Class "J" bingo license. They achieved a 16 percent net return. More than 60 percent of the organization's gambling proceeds were spent toward providing program services. Supporting service expenses were less than 35 percent of functional expenses and they did not have excessive reserves.

The staff recommends that the Silver Buckle Rodeo Club be approved as an athletic organization and authorized to conduct gambling activities in the state of Washington.

**Commissioner Forrest** asked how they did so well.

**Michelle Bernhardt**, the executive director, introduced her assistant, Nick Peck, and their bingo manager, Cindy Arnold, whom she credited with a great deal of recognition for working together with her to develop a move into a new facility. They looked closely at programs and expenses and have worked hard to get it to where it has come. She said they realized they had the opportunity that others may not have to pull the income from a community that is not fighting against a lot of tribal gaming at the moment. She said they were very grateful for that opportunity and were capitalizing on it to benefit their charities as much as they could.

**Director Bishop** asked what "pole bending" was. **Ms. Bernhardt** said it referred to a horse obstacle course event where they race back and forth through a series of standing poles, similar to barrel racing.

**Commissioner Herbold** asked why the Commission looks at the year ended December 1996 instead of December 1997 since it is now 1998. **Ms. Cass-Healy** said it was a matter of geographic logistics and timing. They have 120 days to get their financial information to the staff. The staff then tried to schedule the organization's report in a location where it is convenient for the licensee to attend. **Commissioner McLaughlin** said, then the club isn't out of compliance or anything by having the qualification report presentation and vote so far down the line. **Ms. Cass-Healy** said no. **Director Bishop** said that this organization would not be required to have their '97 financial statements to the staff until the first of May.

**Commissioner Herbold** said she assumed the group had their 1996 information to the staff in a timely manner and then the staff took their time and scheduled it for this week because it's closer to Vancouver.

**Senator Schow** asked if 1997 was looking as good as 1996. **Ms. Bernhardt** said their 1997 reports exceed their 1996 reports and they are very happy.

**Commissioner Herbold** moved to approve the Silver Buckle Rodeo Club as an athletic organization and authorized to conduct gambling activities in the state of Washington. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with four aye votes.*

## **YAKIMA VALLEY OPPORTUNITIES INDUSTRIALIZATION CENTER (O.I.C), Yakima**

**Ms. Cass-Healy** said this organization's mission is to provide facilities and services to promote educational programs, social services, economic development, property ownership and management, the development of housing for low and moderate income families, youth services and also the development and utilization of technical work skills to meet the needs of people in Yakima County and the state of Washington who are unemployed and under-employed. The organization is governed by an 18-member board including 3 officers who conducted 9 meetings during the last fiscal year. They have a full-time executive director and 164 employees who provide program services. Yakima Valley OIC served over 21,000 individuals and households through their programs during 1996 with that focus on low income and disadvantaged persons. They initiated several new programs during 1996 including working with HUD on a youth field program, counseling on home ownership, home preservation and land development, reforming its bilingual education programs, and providing services to senior citizens and working with food banks in the city of Yakima. Yakima Valley OIC met its required combined net income percentage of 14 percent for its Class "K" bingo license by achieving a 17.5 percent net return for its

fiscal year ended December 31, 1996. More than 60 percent of the organization's gambling proceeds were spent toward providing program services. Supporting services expenses were less than 35 percent of functional expenses and the organization did not have excessive reserves. The staff recommends that the Yakima Valley OIC be approved as a charitable organization and authorized to conduct gambling activities in the state of Washington.

**Commissioner McLaughlin** asked if there were any questions.

**Commissioner Herbold** said she noticed that Yakima OIC's program services expenditures were extremely high and said that, in light of the work that they do, that's understandable. She wondered if Ms. Cass-Healy had any idea how that would break out and would they build their own facility and if they own and manage the property. She said \$5 million was a lot of money and wondered just in general terms how that would break out. **Ms. Cass-Healy** said she had a breakdown on that and began to look through her materials. **Commissioner Herbold** said Ms. Cass-Healy could let her know some other time, she was just curious as to how they spend that \$5 million. **Ms. Cass-Healy** said she had it; it was a long detailed statement and she would be sure to get it to Commissioner Herbold.

**Commissioner Heavey** moved to approve the Yakima Valley OIC as a charitable organization authorized to conduct gambling activities in the state of Washington. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with four aye votes.*

#### **DEFAULT ORDER**

#### **JOLO TAVERN AND RESTAURANT, Seattle**

**Commissioner McLaughlin** said this item is withdrawn because the tavern is out of business.

#### **CARD ROOM CONTRACT/HOUSE BANK PILOT TEST**

#### **RIVERSIDE INN, Tukwila**

**Ms. Winslow** said the first organization she would cover is the Riverside Inn. On November 1, 1990, SPD, Inc. purchased the Riverside Inn, a commercial restaurant, country western lounge, dance hall and card room, which is located in Tukwila, Washington. The Riverside is requesting approval to conduct house banked card games at their five blackjack tables with the \$25 maximum betting limit. They're opting to continue with player-funded blackjack for now, but plan on amending their contract for house banked card games such as Let-It-Ride, Caribbean Stud, and Progressive Blackjack, sometime in the future. They also have three poker tables that they will continue to operate in their card rooms, one with a player-supported jackpot. Special agents Connie Nelson and Karen McFarlane reviewed their internal controls. Controls in the areas of the package were compared to appendices B and C and it was determined that the controls were adequate and in compliance with the appendices. On November 22, Special Agent McFarlane conducted a pre-operation inspection and completed the pre-operation checklist. Based on the review, it was determined that the licensee's operations were in compliance with all material requirements of appendices B and C. However, there is a modification to the cage enclosure that will be completed on January 15, 1998. Approval to participate in the Commission's player-funded and house banked card game test program as a Level II, Phase I, operation is recommended with the ability for the organization to come forward with additional amendments to allow for house banking activities in the future.

**Commissioner McLaughlin** asked if there was anyone present to speak on behalf of the Riverside Inn and was told there was not. She called for questions.

**Commissioner Heavey** said the Riverside Inn is an institution in South Seattle. He said it had been a country western place for as long as he could remember.

**Commissioner Heavey** moved to approve the Riverside Inn to participate in the test for house banked games.

**Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.*

### **SKYWAY PARK BOWL, Seattle**

**Ms. Winslow** said the Triple A Bowl Unlimited, Inc. purchased Skyway Park Bowl Restaurant and Lounge and Card Room in Seattle, a commercial bowling lane, on April 3, 1978. They submitted a request to participate in the house banking test program on July 23, 1997, and submitted their internal controls for house banked games. They're requesting approval to operate a total of four tables that will include Caribbean Stud, Let-It-Ride Bonus, Progressive Blackjack and Blackjack, all of which will operate as house banked games with a \$25 maximum betting limit. Special Agents Karen McFarlane and Patty O'Brien reviewed their internal controls. The controls in the package were compared to appendices B and C and it was determined the controls were adequate; however, there was a variance in the count room requirements and alternate controls were put into place that were found to be acceptable. On December 23, 1997, Special Agents O'Brien and McFarlane conducted their pre-operation inspection and completed the pre-op checklist. Based on the review, it was determined that the licensee's operations are in compliance with appendices B and C and their internal control functions are functional as stated in their internal control submission. Therefore, approval to participate in the Commission's house banking card room test as a Level II, Phase I operation is recommended.

**Commissioner McLaughlin** asked if there was a representative from Skyway Park Bowl to speak.

**Ms. Cass-Healy** said that there was someone available to answer questions.

**Senator Prentice** said Skyway Park Bowl Lanes is in her district and neighborhood, and is a place she is very familiar with. She said she had been taken through their security. She said that over the years the thing that impressed them about Skyway Bowling Lanes is that, first of all, they really are the only recreational center up there in a lower socioeconomic neighborhood. They have struggled to get along; they've tried to do some innovative things such as their little golf course. She said this is one of those instances where it is definitely warranted. The one thing that truly impressed her was the true racial diversity in the card room and how they played like a bunch of old friends. She said that really reflected their community and she was very proud to see that. **Commissioner Heavey** said this is another institution in southeast Seattle and that it had been around a long time.

**Commissioner Heavey** moved to approve Skyway Park Bowl to participate in the Commission's house banking test as a Level II, Phase I operation; **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with four aye votes.*

### **CARD ROOM CONTRACT/1996 CARD ROOM ENHANCEMENT PROGRAM**

#### **11<sup>TH</sup> FRAME RESTAURANT, d/b/a LILAC LANES, Spokane**

**Ms. Winslow** said this establishment is interested in operating 10 tables of card games and that's the only change that they are looking for at this time. She had no additional information on the organization because it was just a general enhancement program and they don't do preliminary work other than that which is not documented to come forward. **Director Bishop** noted that the only change in scope is they're adding 10 tables. **Ms. Winslow** said that was correct.

**Commissioner McLaughlin** asked if there was anyone from 11<sup>th</sup> Frame to speak on its behalf. **Ms. Winslow** said she did not think there was. **Commissioner McLaughlin** called for questions or comments.

**Commissioner Herbold** asked if Ms. Winslow was looking for approval for them to operate. **Ms. Winslow** said she was.

**Commissioner Herbold** moved to approve the contract; **Commissioner Heavey** seconded the motion. **Commissioner McLaughlin** asked if there were any comments or questions from the public. No one came

forward. *Vote taken; motion carried with four aye votes.*

#### **ACES SPORTS BAR AND CASINO, Spokane**

**Ms. Winslow** said this organization was requesting participation in the general card room enhancement program by having nine tables of card games. They were also requesting an alternative collection of fees – a rake at five of those tables, and higher limits at two of the tables. Those were the only changes requested at this point.

**Commissioner McLaughlin** asked if there were any questions or discussions and asked if there was a representative to speak. **Ted Parkin**, general manager, thanked the Commission for considering their request.

**Commissioner Herbold** moved to approve the participation of Aces Sports Bar and Casino in the general card room enhancement program with nine tables of card games with alternative collection of fees; **Commissioner Forrest** seconded the motion. **Commissioner McLaughlin** asked if there were any comments or questions from the public. No one came forward.

*Vote taken; motion carried with four aye votes.*

#### **SCHOONER TAVERN, Everett**

**Commissioner McLaughlin** said this one had been withdrawn. **Ms. Winslow** said that was correct. **Commissioner Heavey** asked what had happened to them. **Ms. Winslow** said they had decided to only operate under the provisions that allow to play card games by hand and that was a change that was made last year so that they're not required to be in the general enhancement test to do that.

#### **OTHER BUSINESS/GENERAL DISCUSSION**

**Commissioner McLaughlin** asked if there were any comments or questions from the public on anything.

**Ms. Tellefson** said she had had the opportunity to speak to the media on several occasions over the past few weeks. She said she had used a term about card rooms that was not a good term and she wanted to apologize about that publicly and especially wanted to let the people from Spokane who were concerned about the quote know that she regretted that terminology.

**Commissioner McLaughlin** adjourned the meeting at 2:20 p.m.



## WASHINGTON STATE GAMBLING COMMISSION

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### MINUTES COMMISSION MEETING FRIDAY, JANUARY 9, 1998

**Commissioner McLaughlin** called the meeting to order at 9:30 a.m. at the Skamania Lodge, Stevenson, Washington. She introduced the WSGC staff and Commission members at the head table.

**MEMBERS PRESENT:** CURTIS LUDWIG, Chairman; LIZ McLAUGHLIN, Vice Chair; EDWARD HEAVEY; MARSHALL FORREST and PATRICIA L. HERBOLD; and Ex Officio Members SENATOR MARGARITA PRENTICE and SENATOR RAY SCHOW

**OTHERS PRESENT:** BEN BISHOP, Executive Director; SHERRI WINSLOW, Division Director, Field Operations; CALLY CASS-HEALY, Division Director, Licensing Operations; CARRIE TELLEFSON, Division Director, Policy, Planning and Support; DERRY FRIES, Division Director, Special Operations; JONATHAN McCOY, Assistant Attorney General; and SUSAN GREEN, Executive Assistant

**Commissioner McLaughlin** said she would be the acting chairperson for today's meeting, even though Commissioner Ludwig is present.

#### APPROVAL OF THE MINUTES FROM THE NOVEMBER 13-14, 1997, MEETING

**Commissioner Ludwig** moved to approve the minutes from the November 13-14, 1997, meeting in Ocean Shores, Washington. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with five aye votes.*

#### STAFF REPORTS

##### **GAMBLING POLICY TASK FORCE**

**Senator Margarita Prentice**

**Senator Prentice** said she is an Ex Officio member of the Gambling Commission. She said they were looking at how the state got to where it is and Senator Schow had urged her to make this presentation, which they had prepared for the Senate Commerce and Labor Committee, so that they would understand what it was that they were proposing. She said it's important to understand where the state is going with gambling and how gambling has fared in Washington State.

**Senator Prentice** said that during the early 1800s, there was horse racing and informal wagering on horse racing between the Native Americans and the farmers. Tribal members told her they always had games -- bones and sticks -- and it was always people's inclination to play games, the same as they have all over the world. She said she remembered well all those quarter horse races they had when she was a child in Arizona. Gaming with the tribes is not something they just suddenly decided to allow the tribes to do. This is all a part of what they have always done.

**Senator Prentice** said that in September 1872, Seattle Race Course opened in the Duwamish area in Seattle, which is in her district. Pari-mutuel betting formally began on live horse racing as early as that. In 1889, the State Constitution was ratified and it included Article II, Section 24, which prohibited all lotteries and those were defined as all games of chance. She said that was critical in their understanding of what it is and why they make some of the decisions that they do. On August 18, 1902, the Meadowlands Racetrack opened in the Duwamish area of Seattle. Pari-mutuel betting was operated at the track and it seems to have been successful at the beginning.

**Senator Prentice** said that from 1907 to 1909, there was corruption and controversy that swirled around Meadowlands due to illegal bookmaking. Governor Meade and Representative Ole Hansen at that time vowed to outlaw gambling, and people who have followed Washington State history remember Ole Hansen as being one of the most anti-gambling folks around. In the 1909 session, they sponsored legislation that prohibited wagering on horse racing and that legislation passed. And then began an almost 30-year period of history in which there were no legal forms of gambling operated in the state. She said she was sure there was plenty of illegal gambling going on.

**Senator Prentice** said that on March 3, 1933, horse racing and pari-mutuel wagering on horse racing was authorized by the Legislature. On August 3, 1933, Longacres opened after being built in 28 days. She said she thought it was important to consider what was happening historically at that time. That was during the very depths of the Depression and, naturally, there was a lot of manpower available to build Longacres, but it is important to remember the purpose of that law was defined to preserve the equine industry. Each step taken has had a different focus and a different definition. She said that also was in her district. In 1937, legislation was adopted that prohibited operation of slot machines, but it authorized private or nonprofit clubs to operate slot machines if they were registered with the Washington State Patrol. In 1952, the State Supreme Court said that was unconstitutional -- the portion of the law that authorized clubs to operate slot machines. The Court stated that this law violated the constitutional prohibition on all forms of gambling.

**Senator Prentice** said that in 1972, SJR 5 was passed amending the Constitution to allow the authorization of gambling activities upon a 60 percent majority vote of the Legislature or a 60 percent vote of the people. She pointed out to the audience a pie chart that showed that wagering on horse racing was the only form of legalized gambling in the state. Over \$78 million was wagered on this activity in 1972. She pointed out that the pie kept getting bigger as more segments appeared and expanded in terms of the total dollars that were being wagered in the state. During the 1973 session, the Legislature authorized charitable and social gambling. That included and allowed raffles, bingo, punchboards and pull tabs, amusement games, card rooms and social card games. Governor Dan Evans vetoed the card room and social card game provisions of this bill.

**Senator Prentice** said that it was important to remember also one critical thing that happened, which was the establishment of a Gambling Commission. This really gave them a lot more leverage as times changed because there was a functioning group that was looking at and dealing with gambling policy within this state. During the 1974 session, card rooms and social card games were authorized by the Legislature and she pointed out on the pie chart that it began to be divided among more activities but it also doubled in the amount of total dollars wagered, as well. The intent of that bill was to regulate gambling, so now there are two separate activities with two separate functions. In 1976, the Squaxin Tribe began tribal bingo. During the 1977 Legislature, charitable and nonprofit organizations were authorized to operate Reno nights. This authorization then resulted in the future development and operation of tribal casinos under the provisions of the Indian Gaming Regulatory Act. That was why, although most people had never been near a Reno night, that was what allowed that door to be opened.

**Senator Prentice** said that in the 1982 session in the midst of a state fiscal crisis, the state lottery was authorized by the Legislature. The pie chart expanded very quickly in terms of the total dollars wagered -- now it was \$663 million -- and then, in addition, there are more slices of the gambling pie to be created. The intent of that legislation was to raise funds for the state. This is the reason that the public sees the Legislature or state government as being so hypocritical on the issue of gambling because they have not been consistent. Each law as it passed had a different time and a different reason for it to have been passed. In the 1987 session, satellite broadcasting of live in-state horse races to off-track locations was authorized by the Legislature. In 1988, the Indian Gaming Regulatory Act -- lovingly referred to as IGRA -- was passed by Congress. It authorized tribes to operate Class I, II and III gaming activities under certain conditions. Under the Class III gaming provisions of

IGRA, a tribe is permitted to operate any form of gaming authorized by the state upon the completion and approval of a tribal state gaming compact and that was where the Reno nights came in. The intent of that legislation passed by Congress was to provide economic opportunities and development for the tribes, it acknowledged they had not had because, of course, they were reservation-bound. They had to be within the reservations and some of them were not the ideal locations; they didn't have the freedom to operate just everywhere. So this was the fourth element. That's kind of the complications that the current Commission is having to make decisions within.

**Senator Prentice** said that in 1990, Longacres was sold to Boeing. The state then had reached the \$1 billion mark in terms of total dollars wagered. So there was an increase that is pretty impressive. All segments of the industry continued to see growth, although punchboards and pull tabs experienced the largest increase and began to dominate the pie. Then the other segment began to experience slower growth in dollars wagered and that's the kind of pressure that people in the Legislature frequently get is that one element has hurt another element and that's what the Gambling Commission hears so often. In 1992, the first Class III tribal casino opened in Washington and that was the Tulalip Casino. Live horse racing ended at Longacres. During the 1993 session, the Legislative Task Force on Gambling Policy was approved and began work. It issued its report in December. She was the vice chair of that committee and Representative Mike Heavey, now a senator, was the chair. They looked at what they believed was going to happen with gambling, but even looking from then to now, it is surprising to see how much the times have changed. They were just at the beginning of tribal operations and now they have been able to see what the actual experience has been where they now know some are making it and some are not, which couldn't have been predicted. They are learning as they go on. She stressed that this was simply still in evolution and they do not have all the answers yet. In the 1994 session, the taverns and restaurants were authorized to engage in gambling activities as a primary source of revenue. The 1993 task force had said, "no increase in gambling," and then they came back and did, in her opinion, a modest increase for the taverns and restaurants, but they were authorized to engage in gambling activities as a primary source of revenue as opposed to the previous position where they were an incidental source of revenue. What the taverns and restaurants were telling the Legislature was that they could not exist without having gambling be a larger piece of their activities.

**Senator Prentice** said that the pie continued to grow from \$1.1 to 1.4 billion from '90 to '94. All segments of the industry saw growth, except for horse racing, which continued to see a decline and, of course, that was due in large part to the closure of Longacres. During the 1995 session, the Legislature increased the price of raffle tickets from \$5 to \$25. The request had been for \$100 and although it looked as if that were a large increase, the Legislature held that down and there is still that kind of pressure to raise it. In June of 1996, Emerald Downs opened and brought live horse racing back to Washington. During the 1996 session, the Legislature authorized the expansion of card room activity. The number of maximum tables increased from 5 to 15 tables, player-supported jackpots with the card games were authorized, the method of collecting fees from the card players was modified and, as the pie chart shows, although the total amount wagered continues to increase, only tribal gaming and the lottery see growth in the amounts wagered in these activities. The other segments of the industry begin to see a decline. That is what has brought the state to where it is now.

**Senator Prentice** pointed out that the Commission has been dealing with house banked card games that were authorized by the Legislature and also dealing with simulcasting, which is before the other commission, of in and out-of-state horse racing. Now, \$1.9 billion is spent in this industry on a variety of different activities. Their question is, where does the state go from here in terms of this state's policies on gambling? What became very apparent to both she and Senator Schow and to other legislators was that the Legislature itself really had no focus, no direction and did not understand about many of the segments involved in gambling. What they had proposed was a task force on gambling to include a variety of members, and one would be a member of this Commission. They asked for representatives in the industry to include a tribal member. One of the things she thought the Commission should consider as gambling activities are being looked at and allowing the task force on gambling, which she believes will happen because she doesn't see any barriers even from the Governor. She suggested that the Commission consider a position that would perhaps, for this interim as the moratorium expires on tribal gambling, imposing upon themselves an additional moratorium saying no new games until the Commission knows also where the Legislature is going so that the two are in agreement. She said that that would be a decision that the Commission would be making, but she thought it was an important point to consider. She then called for questions.

**Commissioner Forrest** asked if she felt that the Legislature had a general sense of satisfaction with the current state of affairs or a sense of dissatisfaction. What's the kind of political climate? **Senator Prentice** said it was a sense of dissatisfaction and anyone who has paid much attention to it feels really dissatisfied, but that they all feel uneasy because of all of the legislation that is proposed to them. Session is not the time to try to teach anybody anything, but when someone comes at them and says they have to have something to level the playing field, sometimes it means the legislator is being sold a bill of goods. She believes that the legislators know what their own districts want; some are very anti-gambling, some are very permissive, and some people don't care. She said she knew the Governor dislikes gambling and dislikes it as a source of revenue. He was appropriations chair in the Legislature. Nevertheless, it is a fact of life. It is that kind of tension within everyone here. She asked if it were surprising to them to see how much proliferation of gambling there's been in just the last 10 years and then to say wait a minute, "Let's sit back and take a look at where we are." She does not expect the final answer and there may not be agreement even within the gambling task force. The point was that they have to flush out some of the ideas, listen to everybody, and take a look at what they have come to, which is drastically different from where the state was in '93. She said she did not know if she would be around for the next gambling task force but it seemed to her that this was something the legislators have not wanted to really delve into; somebody has described it as a "third rail" in politics. People really don't want to be associated with looking as if they are pro-gambling. But she thinks the members who participate in the Commission are all committed to being fair. She thinks it is a different picture and they feel very differently about it but they also have some pretty strong opinions. She asked if Senator Schow agreed with her.

**Senator Schow** agreed and said what the task force needed to begin to do is to look at what is happening with gambling in other states. He said there was no sense in their going down a road that some of the states have already traveled down and found out it wasn't the way to go. He thought this task force could give not only the Legislature but also the Gambling Commission a lot of insight on what kind of a decision should be made in the future when it comes to gambling. **Senator Prentice** said the inclusion of a tribal member is really important because some are making it, large tribes, small tribes depends on location and she thinks they need to comprehend what it is that's really happening there.

**Commissioner Heavey** said he had read her suggested proposal for the task force. He thought it would be appropriate to have a member of the Commission present, whether that be a voting member or an ex officio member. He thought there ought to be a couple of members from the Gambling Commission that participate, not just the staff, but the Gambling Commission itself, so they get a better sense of where the Legislature is headed and what they want to accomplish. He said the way it is structured now, there are 11 members and they're all made up from the executive, yet the Gambling Commission is charged with the responsibility of interpreting legislation and enforcing that legislation. He thought there should be more direct participation by members of the Commission. **Commissioner Heavey** said it was just his own personal opinion.

**Senator Schow** said he agreed that the Gambling Commission should be involved. He said he and Senator Prentice had discussed meeting during the first week of session, which starts Monday. Since it will be a little bit slow in getting started, they will have some time to get together and take a look at it and see if they have the right people on the task force. They want to get the Governor's office involved to make sure they do have a task force that is broad-based enough that when the report comes back everybody is going to feel like they've been a part of it -- that they had an opportunity to see what was going on.

**Senator Prentice** said they expect people to voice their own opinions. She remembered that when she first came on the Commission, Commissioner Heavey asked her what the Legislature believed about gambling. She said she kept trying to hold him off because the Legislature did not know enough about gambling and really was choosing not to delve into gambling issues, so she thinks that there are more active commissioners now and they really want to work closely with the Commission. The decisions they make are quality of life issues -- they have to decide what kind of state they want to live in. Gambling will change the character of the state.

**Commissioner Ludwig** referred to Senator Prentice's comments regarding a further moratorium until they had the benefit of a task force report. He asked her to explain that a little more. **Senator Prentice** said that it was the Commission's decision to make. Her thought on that was that the Commission was going to be entering into a

really complicated phase. She said about six months ago, she first became alarmed thinking the state was about to lift a moratorium on tribal compacts and she felt the Legislature didn't know what was going on. She said that, meanwhile, they were dealing with house banked games and the bingo people were telling them they were really being hurt and their bill was vetoed. She thought that things had to settle down before they start to authorize new games. And folks are saying that they want the same thing as another group, and she thought it had to come to a stop. People have to look at it and try to figure out what to do after participating in the task force and understand better what the Legislature's intent is.

**Commissioner McLaughlin** said she agrees with the Senator in her mind when she made the statement, but wondered if the friendly lawsuit wouldn't preclude their really doing that if indeed they came up with some sort of a device that would be satisfactory to both the state and the Indian tribes.

**Commissioner Ludwig** said he shared that concern and that was why he asked the question. The moratorium was the result of an agreement between the tribes and the state. He said he was troubled by the thought of unilaterally trying to extend it. **Senator Prentice** said she was trying to reflect that, at the time as a legislator participating on the Commission, the expansion they allowed at that time. One of the things she has been hit with over and over is this was a huge expansion and she kept reminding them that no there was a moratorium. It was not as popular. She said he may not have heard about it as much, but she sure did.

**Commissioner Forrest** said that, as long as he's been on the Commission, there had been a steady thrust to try to make pull tabs as close to slot machines as possible and that's obviously a factor in the "friendly lawsuit." He thinks it would be an excellent idea if the Legislature told them that they should not approve any more games or changes. Drafting that language, as they know from the lawsuit, would be extremely complicated. He thought that the more the Legislature spelled out exactly how close they are going to come with these new electronic devices, the better off they will be. He said he did not think it is inconsistent with the lawsuit, in fact he was sure that Judge Van Sickle would want a clear-cut legislative statement – this is what's permissible and this is what's not. In the meantime, if the Commission approves a game that is a little more like a slot machine, it's going to be a little bit harder for the Legislature to suddenly say they were changing the rules and the Commission approved it. It's hard to take away once it's given, even if theoretically the Legislature could do it. Psychologically and politically it becomes difficult so it seemed to Commissioner Forrest that since the Commission already has plenty enough to do implementing card room legislation as it is.

**Commissioner McLaughlin** said she was thinking more in terms of timing. **Commissioner Forrest** said he thought there was a lot to be said for freezing games and then the Legislature take a look and the Commission has plenty enough to keep them busy in the meantime.

**Senator Prentice** said she was happy to have opened up discussion with this group.

**Commissioner Herbold** said she thought it was important to have a member from the problem gambling arena participate on the task force. Without that perspective they will not have a comprehensive picture of gambling in the state. **Senator Prentice** agreed and said that Mr. Hanson had approached her after her presentation to the Commerce and Labor Committee and made the same request. She thinks they need to understand more what is involved in problem gambling. She said they have recognized the issue was there but really hadn't worked at it and it was important and there would be more discussions along that line.

**Commissioner McLaughlin** asked if anyone in the audience had any questions for Senator Prentice.

**Bruce Tower**, with Crowell Law Offices, said his firm represents several of the Indian tribes in the state. He said he sees this as coming out looking very poorly to the extent that if, on one hand they are going to suggest that they have a moratorium on authorization of new games available to Indian tribes and yet at the same time they are authorizing licenses per the 1996, the Legislature and the expansion of card rooms. He said it looks like the state is penalizing the tribes while expanding the card rooms.

**Senator Prentice** said that is a valid question because, as she had pointed out in the presentation, when someone comes and says, "They have it; we need it," it's very difficult to slice it and say, "Okay, this is the moment." She said she threw it out for discussion and it is worthy of discussion. In terms of to what extent the

entire state wants to go with gambling, that's what has always to be considered.

**Senator Schow** said the one thing he and Senator Prentice told the Governor is that they didn't want a task force that would take eons to get done. It would have to take place between this year and next year -- it can't take three years. He said it is necessary to give every viewpoint an opportunity to be heard and voice their opinion because it will give the task force a much better idea of where they want to go in the area of gambling. There are 98 House members and 49 Senate member, and they're the ones who are going to make the final decision. He thanked Senator Prentice for her presentation. He said it provides a much better perspective of what gambling is about now, where it was yesterday, and what he would hope this task force will try to do. It will also give the non-tribal gambling an opportunity to present their case and what their problem is and then he hopes they can make a decision which is in the best interests of all of the citizens of the state of Washington.

**Commissioner McLaughlin** asked if there were any other questions. No one had questions. She said Senator Prentice should go around the state giving her presentation to various people or making it available on TVW. **Senator Prentice** said this hasn't been a hot topic, but it really ought to be. There has been sort of a "driift" by the Legislature in making uninformed decisions. She said she did not like being in a position where they are doing that and she knew Senator Schow did not like it either, nor did Representative Fisher. They feel they can give a better direction than they've had in the past.

## **RULES**

### **PETITION TO AMEND PUNCHBOARD/ PULL TAB RULES** **by DENNIS ZABORAC**

Amendatory Section WAC 230-30-070 – Control of prizes – Restrictions – Bonus prizes – Displaying – Procedures for awarding  
Amendatory Section WAC 230-30-080 – Punchboard and pull tab series restriction – Prizes, size of game, and location of winners

**Ms. Tellefson** said Mr. Zaborac is present, so she will let him summarize his petition. She said the staff is recommending denial of the petition as set forth in the rules summary. There was some testimony at the last Commission meeting opposing this petition because they feel that the practice of marking up merchandise is reasonable, given the time commitment that licensees put into purchasing and assembling the product and making the flare. Also, merchandise prizes are really a very small part overall of pull tab sales and represent only 2 percent. Secondly, the staff received a letter at the last minute before the meeting, which they have inserted in the Commission packets, from a licensee who is concerned about the petition.

**Commissioner McLaughlin** said she would like a moment to read the letter.

**Commissioner Herbold** said at the last meeting they had discussed whether 50 percent was appropriate or whether it should be something less than 20-25 percent. She said she thought the staff had indicated that they would come back to the commissioners at this meeting with some kind of indication as to what a reasonable mark-up would be, if 50 percent is not that amount. She asked if anyone had any numbers on that. **Ms. Tellefson** said no, that after discussions with the staff and looking at all the factors involved, not only the time spent by the licensees and the sales taxes paid, but also the significance or the proportion of prizes that actually are merchandise prizes, the staff felt it was appropriate to leave it alone at this point. There have been no complaints received over the years on this type of issue.

**Director Bishop** said he had informally looked at the suggestion that it come forward at 25 percent, which probably should be the floor if a change is looked at, because of the additional sales tax that comes in making the tax rate about 13 percent on these games. Another factor is that there is additional risk involved for damage of the merchandise while it is sitting around and the extra costs. He said he did not have any objective evidence for that.

**Commissioner Heavey** asked why it is of concern to the Commission how much time someone puts into doing a certain activity. He wondered if activity is measured for running punchboards and the card rooms in order to come out with a profit. **Ms. Tellefson** said it was one of bases for the original allowance into the rule. She said

an owner's time contributed toward the value of the prize should be considered in the value of a prize, whereas they don't spend any time toward the value of a cash prize. **Commissioner Heavey** said the owner makes a business decision. He wondered why it was the concern of the Commission to either support or question that business decision. **Ms. Tellefson** said that was up to the Commission. **Commissioner McLaughlin** said that was what they were being asked to look at. **Commissioner Heavey** said he did not believe they were being asked to look at it. He said the staff is saying, "Well, they put in a lot of time so we're not going to spend any time giving you the information you requested." He said they requested specific information but didn't get it. **Ms. Tellefson** said that was one of reasons for the original rule. She said that was all she could pass that on.

**Commissioner Heavey** asked why they did not get the information that they asked for with regard to the cost differences. He said he received something from somebody; it shows that the pay-out is one-half what it is under other activities. **Ms. Tellefson** said that the staff looked at coming up with some calculations and after looking at all of the factors, they felt that it was valid just leaving it the way that it is. She said she didn't realize they had asked for specific calculations and in the future they will make sure and get that for them. **Director Bishop** said that was his responsibility. He said he interpreted the end of the discussion that that portion of it had been resolved. He apologized and assured the Commission they would receive all of the information they needed.

**Commissioner McLaughlin** asked if this could be held over to the next meeting. **Commissioner Ludwig** said with or without the information, he did not think it was fair to hold this over. Mr. Zaborac may want them to since it's his petition, but he had made a special effort to come to the meeting today and he believes that it should not be held over if Mr. Zaborac wants a decision today. **Commissioner McLaughlin** said that was a good point.

**Commissioner Forrest** said he thought that the issue, as far as he was concerned and perhaps the Commission as well, was, if necessary, to regulate that mark-up to ensure that the customer is fairly treated. He said that seemed to him what was before the Commission. He said it had been suggested that the customer is getting a little less for his money if he participates in a game where it's going to be a physical prize instead of dollars. He thought it was a legitimate concern and that it was fairly simple. They could either say, "We'll let the market settle it. If the customer wants to go in for a bicycle where in fact if he could win the money he could buy the bicycle and buy a tricycle, too." Or, the Commission could participate. And it was Commissioner Forrest's inclination that there ought to be some reasonable limit on what the mark-up should be. He thought this was an appropriate function for the Gambling Commission, Commissioner Heavey's comments notwithstanding, although he was not sure what it should be.

**Commissioner Heavey** said he had an additional question about the staff comments that they had received no complaints. He said they had had a lot of discussion about posting odds. He wondered if they would get some complaints if it would say on a merchandise punchboard that the pay-out on this board is one-half of the pay-out of the cash board. **Ms. Tellefson** said that's possible. **Commissioner Heavey** pointed out that then they would have some knowledge. If they don't have knowledge about how they are getting hurt, they can't complain.

**Commissioner McLaughlin** said they could ask the operator to put down what he thinks is a fair market value of the prize. That would be one way of doing it and if people know they can buy it at Costco for three-quarters of that, then they can decide if they still want to play for it. **Commissioner Heavey** said if that's going to be done, it should be what they paid for it, not what the fair market value is. **Commissioner McLaughlin** said she meant what it cost the operator.

**Commissioner McLaughlin** asked if there were any questions for Ms. Tellefson before opening it up to Mr. Zaborac first to speak to his petition and then the audience. No one had questions.

**Dennis Zaborac**, petitioner, said he is formerly of Totem Tabs. He complimented the Commission on its new website and said that it enabled him to follow his petition through the minutes without having to chase it around the state and he said he was aware of the opposition to it.

**Mr. Zaborac** called attention to some of the testimony at the last meeting where different operators described how they marked up merchandise. Mr. Zaborac said there's really no sense to what this mark-up is. He said he was not as surprised by the arguments against the petition as he was by what was not said. No one said or implied that the price that the operator is getting is a wholesale price and that that mark-up is like in retail. He has

been selling pull tabs for about 20 years and always in the back of his mind has been that this was the justification for buying wholesale and marking it up 50 percent. No one's going to get a wholesale price when they buy six Tonka trucks or eight Mariner T-shirts. He said the 50 percent is 9 percent sales tax and the other 41 percent is basically a handling charge as he sees it.

**Mr. Zaborac** said the way it is designed now they are actually penalized if they handle the merchandise. If someone buys from a distributor and he puts it all together and he gives the operator a flare and he marks it up to make a good profit, he has a handling charge in that. So now they put a mark-up on the handling charge. This handling charge actually varies even though the amount of handling is the same. He does not know why it is tied to the gross. It takes just as much time to put in eight Tonka toys where there is a mark-up of about \$80 as it does to put in eight Seahawk jackets where the mark-up is about \$400. The concept of even being a handling charge is kind of ludicrous because they are penalized if they handle it more. The distributor comes in with eight T-shirts for \$25 that can be purchased at Costco for \$20, so the operator goes down to Costco and takes the time to handle it, then they have to bring back 10 T-shirts to have to put in the bowl, which puts them at a disadvantage in being able to pull that game at a profit.

**Mr. Zaborac** said the handling charge is why a lot of this industry has gone to buying from distributors. He is not denying the distributor's right to mark it up, but another thing that has developed because of this – a lot of operators don't care what they pay for the merchandise. All the distributors have an exchange program so it's to their benefit. For example, if a jacket is worth \$300, they only have to put five of them in. What if someone wins the bicycle -- two \$300 bicycles or three \$200 bicycles – they're going to take the rest back. All this merchandise is on consignment, so it comes down to the 41 percent handling charge. He wonders, as one of the commissioners had said, is it a fair charge?

**Mr. Zaborac** said he has some proposals that he wanted to bring up that may answer some of the staff's objections. He said the first one was so simple and logical it may never be accepted and no one in the industry would want it. And that would be to require merchandise games to pay out 51 percent. The other 9 percent would then eliminate the whole tax factor and there would be a 60 percent pay-out. The tax is covered and now it comes down to the decision about what the handling charge should be. He said it should be a flat fee per game. In his experienced opinion, there really is not much more handling between the two games. Regarding the one exception mentioned earlier about the BBQ set that was too much to handle, just don't put it in, put in a Coleman gas stove or something like that instead. His recommendation on the handling charge would be a flat \$50. He said the industry would cringe at that, but how much time is there in handling, especially when most items are bought from the distributor along with their flare. In his experience, it adds up to about 20 minutes. If all the operators say they can't do the \$50 handling charge, he'll start a company that will come out and change their games for \$50.

**Mr. Zaborac** said his second proposal was to do away with the percentage. The reason this petition is being brought up now rather than 20 years ago is because the industry has changed, and when one rule is changed, others are affected. Even though he thought this was rather senseless in the beginning, what really made it senseless was about five years ago, the operators all came forward and said they wanted more tickets in their games. They had 4,000 tickets and now they wanted 10,000, 12,000 and they thought they could give out more and bigger prizes and at the same time make more money on the game because the game has \$3,000 worth of sales. So they got a game which gave them more profit, but at the same time the mark-up was marked up again another 50 percent. They won on both ends – they have games out there where they have \$1500 mark-up in addition to making \$3,000 on the games.

**Mr. Zaborac** said he was not out to kill the merchandise industry. He noted one of staff's objections was that it is only 2 percent of the sales – why bother? He said 2 percent of the sales is \$10 million, according to his math, and looking at the Senator's presentation he thought card rooms was in the area of about \$15 million. He asked how many hours this Commission had spent on card rooms. They are worth \$15 million and merchandise is \$10 million. He said this proposal would be a little more acceptable to the distributor if they consider 25 percent straight across, but he is not in favor of this because it cuts the problem in half. There is still the problem of discrepancy – there's no more time for this game than the other so why should the mark-up be twice as much?

**Mr. Zaborac** proposed that the 50 percent markup should be maintained, but that a cap should be put on it of



about \$300. They put a cap on how much a player can win -- \$500. He is concerned that the 25 percent across-the-board would probably kill the 10-cent game. He thinks his proposal is the most entertaining; it's good for the players, a lot of people play merchandise that won't play a cash game. The 10-cent games and the quarter games are fun to play and the player doesn't get hurt too much. If they put a straight 25 percent across, the profit will be pushed to the right side and there will be more 50-cent games. He urged that it be left at 50 percent, put a cap of \$300 and this will put them in line at what the maximum mark-up was on a game prior to increasing the ticket costs and the ticket size. The pay-out would be 40 percent on the 10-cent games and with the 9 percent tax they will pay out about 49 percent. On the other end, the pay-out would be 65 percent in the extreme case of a dollar game with 10,000 tickets, and this includes the tax. From what he hears, everyone is paying out 70 percent anyway and he thinks with 65 percent on a game, a profit of \$3,000 can be made, which isn't too bad.

**Mr. Zaborac** said he'd like to close by addressing the three statements against his proposal made by the staff. The staff sees the 50 percent markup as reflecting the value of time spent by the owners in finding and preparing the merchandise. He said nobody is going out there to find it because they are penalized -- they have to put more prizes in it. He said it made no sense to have a \$1,500 markup when it takes just as much time for another game that has a \$80 markup. Secondly, merchandise prizes are a very small percentage of the prizes awarded. Again, they are talking about a \$10 million industry and it's not that insignificant. Thirdly, this one is the most common and on all of his petitions this one comes up. The previous director said, and it was mentioned four or five times in the minutes of the last two weeks, that the staff has not received any complaints. He said Commissioner Heavey had answered part of that for him. If there is a rule change, there are going to be no complaints from anybody that made money from the rule change. There's going to be no complaints from anybody that did not know about the rule. There'll be no complaints from anybody that did not know about the rule change. The most important reason there are no complaints is that the players out there have blind trust in this Commission. They accept whatever the Commission puts out there. There is the seal of approval of the Gambling Commission, which means it's right and they don't question it. He said he knows they are aware of that responsibility, but sometimes he thinks the Commission should look outside these doors. These are called public meetings, but there are no members of the public here, no pull tab players, everyone is on a first-name basis. These are industry meetings. He said the reason they are industry meetings is because not enough has been done to notify players about these meetings. Every operator, distributor and manufacturer is on the mailing list and they know what the agenda is and where the meeting is. But he wondered how many players were on the list. His last suggestion was to recommend that the Commission consider attaching a flier to the notification of the operator that includes a notice of the next meeting and that everyone is invited.

**Mr. Zaborac**, referring to an example on a sheet he had passed out previously, said the director had the actual profit and loss statements for 42 months from a tavern. The reason Mr. Zaborac chose that particular tavern was that he was interested in what the pay-out actually was and it is pretty constant in what it does. He said the owner did not want to be identified because there is sort of a stigma on operators who show they are too "player-friendly." He has one bowl, it's always the dime game, 90 percent of the time it's 4,000 tickets, and once in awhile it's 5 or 6,000. He is right in the middle, an average tavern. He needs a \$300,000-level license a year, which pulls in about \$25,000 a month, so they have a constant. The owner would be glad to talk to anyone in the Commission, but he doesn't want his name to be announced. Looking at 220 games, even though it's a dying game, he thinks that is enough of a sample to get kind of a picture of what is happening. He said this number of 35 percent pay-out surprised even him. He said his accounts had always out-performed the state by about 5 percent anyway on cash games and merchandise. A more realistic number is probably 40 percent. They would then add the 9 percent sales tax to put it at 49 percent. This is in contrast to cash games, which are about 68 percent. So there is a lot of mark-up in it. And there is a lot of profit in there.

**Commissioner Ludwig** asked if a player who plays merchandise games really cares what the item actually costs. **Mr. Zaborac** said he didn't think the player cared what it cost, but he thought the player had a right to get 60 percent pay-out. The commissioners should give him an equal chance, equal pay-out, on it regardless of the cost. And the cost is going to be marked up by the distributor. Most of this time, this distributor cost is more than retail cost.

**Commissioner Ludwig** wondered why they allow the distributor to mark it up. Why don't they regulate that too and protect the customer by saying you can't pull the game. According to Mr. Zaborac's philosophy, to the extreme would be to say if an operator puts that game out, they're going to have to run it clear out and then it's

known exactly what the percentage is going to be. **Mr. Zaborac** said all he was asking was to make the merchandise games equal with the cash games. **Commissioner Ludwig** said he remembered one businessman, Mr. Tackitt, who spoke at the last Commission meeting and said he had a garage full of merchandise he wanted to get rid of. He thought the Commission had to take that type of situation into consideration, too, when they are dealing with business. He did not think it was the Gambling Commission's business what a businessman chooses to pay for his merchandise. **Mr. Zaborac** said he was not suggesting that they regulate what the businessman pays for it; he was asking why are they marking it up. Why is a handling charge being made?

**Commissioner Heavey** asked if it was the Commission's business that these people have to store this merchandise and they have a garage-full. **Mr. Zaborac** said he did not believe it was. **Commissioner Heavey** said that was their business decision. If they want to fool around with merchandise rather than cash, that's their problem. **Mr. Zaborac** referred to the example the commissioners had brought up about the operator who started buying his own merchandise. He bought from Costco. Costco has an exchange program. What he doesn't want he can take back. Distributors now have a pretty standard policy. If it's not wanted, they'll take it back; there's no need to have storage. It's actually purchased almost on consignment, which he is not sure is quite legal under gambling rules.

**Commissioner McLaughlin** asked if she understood it correctly that it was all right if the distributor marks it up, but just not the operator. **Mr. Zaborac** said if the distributor marks it up too much and they eliminate this 50 percent mark-up, the operator then is going to go elsewhere to buy it. As it stands now, he doesn't care what the distributor marks it up because he's going to mark it up and there are probably fewer prizes in his game.

**Commissioner Ludwig** said one operator might have the same board that the guy across town has. One of those operators might buy his prizes from a bona fide wholesaler; one may buy them from Costco or one may buy them from the distributor. The profit is going to vary depending on where they get their merchandise. And Mr. Zaborac is asking the Commission to have to sit down and tell this one operator that they can't give that same bicycle away because they paid less than the guy across town paid for it. He asked if that wasn't a can of worms. **Mr. Zaborac** said he was not asking them to do that. He said he was just asking that they do not mark these prizes up 50 percent. If an operator pays more for his, then they don't have to put more in there.

**Commissioner McLaughlin** said that, as she understood it, he was only saying that the operator not mark it up; but he's not saying that to the distributor. **Mr. Zaborac** said that was right and that was what is in effect right now. There is a regulation that says the operator can mark it up 50 percent and this whole petition is questioning why can he mark it up \$1,500. What is he doing to justify that when all the handling is done by the distributor? What is the fair market value of this item?

**Commissioner Heavey** asked if, on the cash punchboards, the distributor can sell those boards for any price he or she wants to put on that. **Mr. Zaborac** said yes, but he was limited by competition. **Commissioner Heavey** said they could make a punchboard and sell it for \$10,000, but nobody is going to buy it and that Mr. Zaborac is suggesting that's the same thing that's going to happen on merchandise. If they have merchandise out there and they mark it up too high, nobody's going to buy it. **Mr. Zaborac** said they won't if they eliminate the 50 percent mark-up or adjust it to a fair value. The incentive right now is to buy the most expensive merchandise out there because it means they have to put less in the board, especially if they know they can return the merchandise. If they go the other way and they're controlled by the marketplace, they can mark it up to a level at which it is not beneficial to go down to Costco and get it. Right now they are penalized by going to Costco, because they have to put more prizes in.

**Commissioner Heavey** asked what the effect would be if all punchboard and pull tab games, merchandise or cash, must have a minimum 60 percent pay-out. The Commission doesn't care how much the merchandise is marked up. **Mr. Zaborac** said he did think they had to consider the 9 percent tax; it is legitimate and that's why he suggested 51 percent.

**Director Bishop** said the basic effect would be to put it down and to factor out all of the other costs associated with running merchandise if they are looking at that as a factor. If they took the approach that it is not anything they should consider, then he would say that would put it on an equal basis with cash boards. **Commissioner**

**Heavey** said they would permit them to calculate in the cost of the merchandise, but they still have to have a 52 percent pay-out. **Director Bishop** said he was saying that, if they take the actual cost of the merchandise and mark it up so as to only result in a 52 percent pay-out, that would factor in the cost of the tax and make it 52 percent for merchandise plus tax, which would be equal to 60 percent for cash.

**Commissioner McLaughlin** asked if the staff would support that at this point. She asked how Mr. Zaborac would feel about holding it over. **Mr. Zaborac** said he would not mind if it were held over.

**Director Bishop** said, as a personal observation, he thought that it would decrease the amount of merchandising done. He thanked Mr. Zaborac for coming to this meeting to testify because it was helpful. Some of his suggestions are things that he had been mulling over trying to come up with something that was fair. He understood Mr. Zaborac to say that the effect of the tax reduced the mark-up from 50 percent to 41 percent. He said he thought that would be if they took the difference between the 40 percent and 60 percent that would be in fact reducing it from 20 percent to 11. **Mr. Zaborac** said that was fine. He said it still added up to a large dollar amount. **Director Bishop** said it minimized the impact of that statement. As to the other one, he wondered if the limit of \$300 was the actual mark-up. **Mr. Zaborac** said the mark-up would be about \$300. He said he thought that was plenty for a handling charge. **Director Bishop** said he thought that was about where they were right now. **Mr. Zaborac** said no, that's where they were when they had 4,000 tickets at a quarter game. They had a mark-up of \$200. There is a mark-up of \$400 on 4,000 tickets in a 50-cent game; now there are games that have 10-12,000 tickets.

**Director Bishop** said Mr. Zaborac was talking about the increase in gross as compared to the mark-up. **Mr. Zaborac** said there was a \$300 handling charge on each game, so it would be pretty simple to regulate. They could take 60 percent and what they do now is the 60 percent pay-out. The cost of the invoice can't be no greater than within \$300 of that 60 percent pay-out. It's a flat fee. This is what they were making before on it. **Director Bishop** said he would get with Mr. Zaborac later to be sure he was clear on how he is thinking.

**Bill Spencer**, from Big Brothers and Sisters in Spokane, said that a lot of their colleagues from the WCCGA didn't show up today because of the meeting location and the driving distance. He said he was a little confused in that the Commission was going to come today for a final vote, but Mr. Zaborac has shown up. Even though he wasn't at the majority of the debate that occurred at the last meeting, he shows up today and throws a bunch of numbers at the commissioners. He said, as a manager of a gaming operation, he deals with about \$78,000 a year in merchandise prizes and their numbers don't jibe with Mr. Zaborac's. He said if they wanted to go ahead and delay the vote by two more months, they could provide the commissioners with some more numbers, but a lot of what Mr. Zaborac said he thinks his industry and a lot of its members would not agree with. He did not know if it would do any good to delay it by two more months. The staff has come out against it; the industry, the WCCGA, has stated that they support leaving it the same. He said he had been a manager for 17 years in the gaming industry and their customers have not complained. He said he has never heard of one complaint. He said a lot of Mr. Zaborac's numbers show he's talking from the distributor's point of view versus the operator. There is a lot of cost involved in merchandising that he has not shown them and he thinks it does justify the 50 percent.

**Sherry Brown**, from Mr. Ed's Bingo and Casino Supply, said they have 35 salespeople on the road and when they purchase merchandise, they usually purchase direct because they buy in such quantity. She said she buys on the average of one or two boards per salesman and she takes the risk when she buys the merchandise that it's going to fall flat on its face in the marketplace. At any given time, because of the corporate culture that has been established in the field with merchandise being taken back – she would love to see that go by the wayside – but they as distributors are forced to take merchandise back at any given time. She has somewhere between \$35-\$45,000 in merchandise that she is unable to unload because it has lost its value in the marketplace. The only thing she can do is either donate it or to sell it in an auction at 10 cents on a dollar. This has been continuous for 24 years. The 50 percent mark-up at least gave them a little bit of cushion against the great quantity and dollar factor and the risk that they take by buying in the quantity that they buy. She said she could buy one of the merchandise boards like some of the operators do when they go down to Costco. But she believes Mr. Zaborac is incorrect when he tells the commissioners that it takes 20 minutes to make up a flare. Just in receiving, she has an hour worth of labor involved in receiving the merchandise, not to mention that she has two full-time people that put merchandise boards together and track her inventory. This 50 percent mark-up

helps cushion some of those costs, too. She said there's always more than one side to a situation.

**Mr. Zaborac** said he is not questioning her right to mark up anything she wants for her handling charges. His petition has nothing to do with the point beyond the operator. He said there was one other thing that he had not intended to bring up, but since everyone else always brings it up at all these meetings – that they're the biggest, they're the best, they have all the numbers. People probably wonder where he came from. He said most people do not realize that, in 1993 and 1994, he was probably the biggest operator in this state and the reason that is not known is that he ran 11 locations -- bowling alleys, fraternal organizations, and he did it single-handedly. He personally put in and changed 10,000 games; they did close to \$7 million a year and he was not listed as one organization, as the largest bingo operation. But he does have the experience and he does know and is not just throwing out numbers as some guy off the street.

**Commissioner McLaughlin** called for discussion or questions by anyone; no one had comments. She called for a motion.

**Commissioner Herbold** moved to defer the decision for two months because this is now significantly different than what they had started out with at the beginning of the meeting and there are people in the audience who indicated they would like to present the commissioners with numbers. One option is denying this petition and then asking the staff to put something together on a different basis, but she thought they would end at the same point. She suggested this be deferred so they can gather additional information and make a better-informed decision in two months.

**Commissioner Forrest** seconded the motion. *Vote taken; motion carried with four aye votes; Commissioner Ludwig voted no.*

**Commissioner Heavey** asked the staff to prepare an analysis that is similar to the one they have received from Mr. Zaborac and take into account sales tax. This apparently does not take into account the sales tax impact because it's not 9 percent, it's something less than that. **Director Bishop** said the staff will come back next month with statistics.

**Commissioner Ludwig** asked for an indication from staff, without any research or extensive study, what the impact or effect would be just completely removing the 60 percent requirement on merchandise pull tabs and punchboards. **Director Bishop** asked if he means to just let the market decide. **Commissioner Ludwig** said yes. He said they could mull that over; he was not requesting a formal report or any extensive study, just an off-the-cuff response.

**Commissioner McLaughlin** said that, in other words, players take their chances to get that teddy bear if they want it. **Commissioner Ludwig** said he thought the players are smart enough to know whether they want to take a chance on that prize or not, without reference to how much profit the operator is making. **Commissioner Heavey** said it might be the same with the \$500 prize, too. That's opening the door a crack to complete deregulation of pay-outs on punchboards. **Commissioner Ludwig** said he's not asking because he thinks that should be done, but he's curious to know if there would be any impact. **Director Bishop** asked if he was interested in the market or the impact on staff. **Commissioner Ludwig** said he would like to know if this would create regulatory problems for them, the Commission or the licensees.

**Commissioner Forrest** said it was a healthy way to start '98 with a little division of opinion. They have had unanimous decisions since he arrived and he thinks it's a good sign.

#### **PUBLIC CARD ROOM EMPLOYEE RULES**

Amendatory Section WAC 230-02-415 – Public card room employee defined  
New Section WAC 230-02-425 – Licensed card room key employee defined

**Ms. Tellefson** said these two rules are up for final action, although it's up to the Commission as to whether final action should be taken. There have been a couple of changes to these rules. There are two rules defining "card room employee" and "key employee." Following comments from the November meeting, the staff wanted to clarify and get rid of some of the repetition in the card room employee rule that also had a reference to the key

employee definition, so that was deleted. She said there were some changes made to versions since the agenda went out. In Item 4(a), there was a typographical error where in the first section the word "designated" was stated as "designed" before, which was changed to "designated" like it should have been. They deleted in subsection 7 the reference to key employees because it just wasn't necessary. That is already included in its own definition. Those are pretty much housekeeping changes.

**Commissioner McLaughlin** asked if the staff is still recommending that it be held over. **Ms. Tellefson** said she didn't think it was necessary after she revisited the changes that were made. Both of the rules accompany the pilot test and Director Winslow has made some changes to the appendix in the card room contracts setting forth specifically who was a key employee under this test and who should be licensed and in what capacity. These rules correspond with the card room pilot test.

**Director Bishop** said they were put into the agenda for final action even if this conflicted with their recommendation, but they could be acted upon today. **Ms. Tellefson** said the changes in Item 4(b) were simply word-smithing changes, nothing of substance.

**Commissioner McLaughlin** called for discussion or questions.

**Commissioner Herbold** asked if there is a definition of a key employee with respect to other gambling activities besides card rooms, such as in a bingo hall. **Ms. Tellefson** said no, but there was a gambling manager definition that is somewhat similar and applies to bingo halls and pull tabs. Also commercial and nonprofit pull tabs, but it is a little different concept. **Director Bishop** said the term "key employee" is only used in the card room industry. **Ms. Tellefson** said she thought the word "key employee" was also used by the National Indian Gaming Commission when they look at those who are involved with Class III gaming, although it is not a term adopted in the compacts.

**Commissioner Herbold** said the bottom line is that it designates who key employees are with respect to card rooms so that we can focus on who needs to be licensed. **Ms. Tellefson** said it's a different level of licensing and regulation; these are people who have an integral role in the management or operation of the card games -- decision makers -- so it's a different level of background investigation. **Director Bishop** said they feel that licensing of key employees requires not only looking at their criminal background but possibly their credit background too, since they will have control over substantial amounts of money and would have the ability to manipulate that through overrides on control systems. That's the main reason for having a distinction between the two.

**Commissioner McLaughlin** called for any testimony on these two rules. No one came forward.

**Commissioner Ludwig** said it refers to Class "E" or Class "A" card rooms and he had forgotten what those classes were. **Ms. Tellefson** said Class "E" are commercial operators where they charge a fee to play generally, and Class "A" are nonprofit or charitable card rooms where they charge a fee to play. What they have in common is they are both charging fees. **Director Bishop** said Class "E" and Class "A" card rooms are those right now that are authorized to conduct poker and house banked games.

**Commissioner Ludwig** asked if any of the card rooms that they are working with for house banked authorization or a license had commented on this proposal and if they were fully aware of them. **Ms. Tellefson** said she believed that they were aware of it; it's been discussed in the study groups, also in the context of the contract. **Director Bishop** said he would defer to Ms. Winslow on that.

**Ms. Winslow** said she had instructed her staff to keep the licensee groups informed. They have been working on the addendum to the appendix and they have been waiting to get the final language on the rule before they send that addendum out, but the information had been delivered to the licensees to the best of her knowledge.

**Commissioner Ludwig** wondered if the impact would be a different standard of perhaps higher license fees. **Director Bishop** thought that there was a \$50 difference in the license fees. **Ms. Cass-Healy** said that it was around \$50 and the main reason is for the fingerprinting.

**Commissioner Ludwig** moved to approve and adopt the proposed rule changes to WAC 230-02-415 and 230-02-425 as amended by amendment sheet #2. **Commissioner Heavey** seconded the motion but asked if the staff recommendation was from the November meeting and if they recommended it be held over for an extra month.

**Ms. Tellefson** said she thought there had been some miscommunication between the staff who had put the agenda together. The staff recommendation today is to adopt.

*Vote taken; motion carried with five aye votes.*

### **BINGO GIFT CERTIFICATE AND MERCHANDISE RECEIPT RULES**

Amendatory Section WAC 230-08-080 – Daily records -- Bingo  
Amendatory Section WAC 230-20-102 – Bingo prizes – Records of winners  
Amendatory Section WAC 230-20-115 – Gift Certificates – Requirements

**Ms. Tellefson** said these rules are up for final action and have been discussed with the bingo study group. They have to do with bingo record keeping and accounting records. Items (a) and (b) allow a licensee to account for merchandise prizes of \$15 or less by using a merchandise prize receipt log as an alternative to the duplicate copy accounting method. Item (c) allows alternative methods of accounting for bingo gift certificates that are purchased but never redeemed. It is just a different accounting structure. The staff recommends final adoption.

**Commissioner McLaughlin** called for any questions from the Commission; there were none. She opened discussion for public comments. No one came forward.

**Commissioner Heavey** moved to approve the rule; **Commissioner Ludwig** seconded the motion. **Commissioner Heavey** asked if the word “session” had been defined somewhere. **Director Bishop** said that it had.

*Vote taken; motion carried with five aye votes.*

### **INTEREST IN SEPARATE BUSINESS RULE**

Repealed Section WAC 230-30-220 – Interest in separate business involving punchboards and pull tabs at a different marketing level prohibited.

**Ms. Tellefson** said this rule is a repealer of the prohibition on involvement between operators or distributors and manufacturers in different marketing levels. The staff initially brought this proposal forward at the last Commission meeting to get the issue out for discussion. At that time, they said they would come forward with an alternative proposal for this month, but they received quite a few comments both from the staff and the industry informally and don't have a conclusion as to exactly what their proposal should be at this time. There is someone here to testify on this rule. The staff has some concerns about eliminating the prohibition altogether, but recommend continuing the discussion and perhaps at the next Commission meeting they will be able to have more attendance from licensees as well as have some more comments from staff. The goal is to provide the Commission with a proposal next month that should make some sense given all the comments received. This is up for discussion only; no action is required today.

**Commissioner McLaughlin** called for further discussion.

**Commissioner Heavey** said he understands that the staff is going to recommend this rule be repealed. **Ms. Tellefson** said that next month it is hoped they will come up with something for filing that would be an alternative to this. Perhaps next month they would ask the repealer be held over another month so that they don't have a situation where they have a rule that's repealed and nothing to replace it. **Commissioner Forrest** said that in other words it would be a partial repeal; they are going to want to preserve certain aspects of it. **Commissioner Heavey** said there would be no hiatus where they have no regulation and then impose regulation at some later time.

**Commissioner McLaughlin** called for any public discussion on this.

**Tom Ebel**, Spokane, said he has been retired for about eight years but married a woman who owns a distributorship in Spokane. He got tired of staying home, so he decided to buy a tavern, then found out he can't do that because his other half is a distributor, so she is keeping him from going into business and doing something with his time. He doesn't want to divorce his wife in order to go into the business and feels there should be another way. He talked to an attorney who he took to Ms. Cass-Healy and Director Bishop. He was told that he should come to these meetings to let people know what he thinks. He said he has the letter with him if they'd like copies.

**Mr. Ebel** feels this is unfair. He and his wife had a prenuptial agreement that makes them two separate entities and they don't co-mingle their money. He does not understand the law against it. He said he and his wife want no part of each other's businesses and he is even willing to incorporate and show that she has nothing to do with his business. He said his attorney told him he could even draw up papers saying she can't come into the tavern. He is 70 years old and feels 40 and still wants to work. He said his wife is working and she will be working another four or five years and she wants to work. He understands this rule may be postponed another month, but he has a tavern in mind that he wants to buy. He understands that next month it is to be finalized. Now he hears it may take even longer. He's concerned this will take too long for him to buy this tavern. He hates to have it postponed and he wants to see something happen on it.

**Ms. Tellefson** said it had been filed and it will be up for final action next month along their normal course.

**Commissioner McLaughlin** asked why they couldn't follow that course even though they might come up with some amendatory language. **Ms. Tellefson** said if the amendments are substantive, then they have to re-file those so the public has notice of what they are and has a chance to comment on them.

**Director Bishop** said the staff doesn't think it is necessary or prudent to repeal the entire rule. There are certain restrictions in the marketing levels that they feel need to be maintained. He had a very good conversation with Mr. Ebel and had compassion for his appeal. Unfortunately, Washington is a community property state and the rules were written before the state had prenuptial agreements and separation of property. The staff will consider for their proposal the fact that there will be ways, by contract or legally, to bypass the community property laws, but right now, the advice that he received was that it would not bypass our rules. **Commissioner Heavey** asked what that was based on. **Director Bishop** said it was based on an informal opinion. The Commission's rule gets into language that says qualifications for a license holder and a spouse are the same. "Maintaining a marital community," it doesn't say marital property or community property.

**Mr Ebel** said his attorney has looked into this matter and feels that even now he wanted him to appeal it. He was turned down, but he said even now he thinks that he could get a license; that they couldn't stop him.

**Commissioner Heavey** wondered where the language was located about marital community. **Director Bishop** said it was under WAC 230-04-170. It's in the licensing section. **Commissioner Heavey** wanted to know what it said specifically.

**Director Bishop** read that, "When a married person is an applicant for a holder of a license the spouse of such applicant if the parties are maintaining a marital community shall be required to have the same qualifications as the applicant." In this case, qualifications being not operating in a different marketing level. He said they had discussed this at the Commission level in '89 or '90 regarding a distributor representative who was in the same situation as Mr. Ebel. The Commission, at that point in time, determined that there could be no separation and to maintain the current rule without any changes. So that's also a portion of where his decision comes from. He thinks Mr. Ebel has a valid point; he feels compassion for him; he thinks it is time for the Commission and staff to examine this rule. He just did not see any legal means that he could bypass the Commission's rule at this point in time. He would be glad to talk to Mr. Ebel's attorney. He said this is an example of many other rules that probably should be looked at and updated to 1998 standards.

**Mr. McCoy** said he was going to point out the Peking Tavern case that they did, which was a declaratory judgment order issue that came up and the same factors were involved. His suggestion was that, rather than repealing the rule, in order to facilitate the Director having the authority to grant a waiver of the rule by adding an amendment that would grant the Director the authority to waive the rule upon good cause shown and then laying

out certain factors that would constitute good cause. That would allow some flexibility.

**Commissioner McLaughlin** asked what Mr. McCoy thinks the reason for the rule is. **Director Bishop** said the staff had discussed it and questioned its validity. The staff thinks that it is very important because, in the case of punchboards and pull tabs and specifically bingo disposable paper, the gambling product is in inventory. The opportunity to under-report or avoid taxes is tremendous if someone has the ability to supply the product and to play the product. **Commissioner McLaughlin** wondered why they couldn't supply to your own business. **Director Bishop** said he thought it would be one of the issues that they would bring forward.

**Mr. McCoy** said the criteria that he had in mind was that there be some sort of conditions that would apply. **Commissioner Heavey** said that nothing could be done today.

**Commissioner McLaughlin** asked Mr. Ebel if he was going to lose his chance to buy his business. She also wondered if he could run the business without pull tabs.

**Mr. Ebel** said his concern was that the whole matter would drag on and on and a tavern without pull tabs would never be successful. He said he is unable to get a gambling license until he has a liquor license; he has to get a corporate license first to get a liquor license; then he has to have those two licenses to get a gambling license. After the Commission decides whether he can or can't, it will take another two or three months before he can get into it.

**Director Bishop** said they would be glad to work with Mr. Ebel, but as director he does not have the authority to grant a license at this point or recommend it to the Commission. But what he can assure him is that the situation is being considered and will be a part of any amendment to this rule. He suggested that Mr. Ebel get his contract predicated upon the license being granted by the Commission, they will hold up their action on it; they will complete it up to that point because right now as he understood the matter, this is the only issue that would prevent Mr. Ebel from getting a license. He said there is a fair level of certainty that it will occur come March, or at the latest April, but that is all he could do right now unless he is directed otherwise by the Commission.

**Commissioner McLaughlin** called for comments from the Commission.

**Commissioner Heavey** said if they file this and then they make a substantive amendment, it is his understanding that they are not required to have three public hearings. **Director Bishop** said it's a timing point. He thought they had to have the rule published at least 20 days prior to any action taken on it.

**Commissioner Heavey** said they could file this today and start the normal process. **Director Bishop** said the repealer has been filed. **Ms. Tellefson** said the repealer has been filed for public comment but the Commission hadn't taken action on it. **Director Bishop** said the Commission could repeal the rule and that would allow Mr. Ebel to get his license. But in the interim, before the staff could get the new rule in, they would have no regulation. **Commissioner McLaughlin** said the window would be open for somebody else to do it. **Director Bishop** said that was correct; they would probably have a two-month period that there would be an opportunity for somebody to slip in.

**Commissioner Heavey** asked Director Bishop if he recommended they hold off for two months.

**Director Bishop** said yes, unless Mr. McCoy could come up with specific modifying language. He said they could work on that if the Commission wanted to move on to other agenda items while they worked on it. That would move the time up to, at the latest, March. **Commissioner McLaughlin** asked if the Commissioners wanted to go on to the next item while they worked on this item. **Commissioner Heavey** moved to go on to the next item on the agenda.

**Commissioner Forrest** interjected a note of caution about freehand drafting of a rule. He said all lawyers had been burned at one time or another by trying to do something in the middle of a conference, so he urged caution and that they should not feel pressured to get this done. In free-handed drafting there is the law of unintended consequences. **Director Bishop** said he would like more time than five minutes.

**Commissioner Heavey** said if the staff were uncomfortable in trying to do something to accommodate an



individual, but he doesn't think that the Commission should comment at the individual and what they should do is to continue with the Commission's responsibility, which is to protect the public. He is not unsympathetic to the individual, but tough cases make bad law and he doesn't think the Commission should get caught up in that kind of activity, so if the staff are uncomfortable, they don't feel it is reasonable, then he thought they should just act on it as is.

**Commissioner McLaughlin** asked Mr. McCoy if he would rather not have any time to work on it at all at this time, or, would he rather take some time and then come back and tell them his opinion. **Mr. McCoy** suggested that if he could come up with some kind of language that could be filed that would avoid the issue of its being a substantive change if it was modified it down the road. This would, of course, be a substantive change that would require re-filing.

**Commissioner McLaughlin** asked if the Commission agrees. **Commissioner Heavey** said, in looking at this rule standing alone, if a couple have an agreement that establishes the distributorship and the retail outlet as separate property of one spouse, they could probably get by this rule. But the other rule is the one that prevents them from doing it. He said the problem is, does the Commission look at this rule or the other rule? And they are looking at the other rule, then it doesn't make any difference what they do with this rule. He thought they ought to take a better look at what they are doing rather than jumping into this thing and trying to write something up so they delay it a month. He said he sympathizes with the fact that the individual is caught in a very unfortunate dilemma, but he can through the exercise of an option or other activities in the contract, extend his right to purchase that tavern. He may just luck out and lose that tavern and get a better one. **Director Bishop** agrees that the best approach would be to amend the other rule to take care of this situation. That would take care of it in all situations rather than this situation.

**Commissioner Herbold** asked if the other rule were amended and exceptions made for when that rule doesn't apply and prenuptial agreement to not have anything to do with each other's business, if those were exceptions, or that either the Director or the Commission could waive those restrictions in appropriate cases, can that be enacted next month on an emergency basis or does that just not fall into the criteria which allow an emergency enactment? **Mr. McCoy** said he would be uncomfortable making that into an emergency. The emergency rule authority is limited to taking action to prevent harm to the public, as opposed to granting authority to an individual. **Commissioner McLaughlin** said a decision must be made. **Commissioner Heavey** pointed out that this is just up for discussion. **Director Bishop** said no action is required.

#### **RAFFLE RULES – ALTERNATIVE TO PETITION BY JAMES H. WILLIAMS**

Amendatory Section WAC 230-20-325 – Manner of conducting a raffle

Amendatory Section WAC 230-20-335 – Members-only raffles – procedures – restrictions

**Ms. Tellefson** said these are up for discussion and possible filing today. At the November meeting there was a petition on the agenda having to do with discounted raffle ticket schemes. Since then, the staff has had conversations with the petitioner and came up with some compromises. The petitioner withdrew his petition and what is before the Commission today are compromises that were reached between the staff and the petitioner. They are schemes that involve discounted raffle tickets. Currently, for a public raffle, only a Class "E" or higher raffle license can have discounts. This proposal and the first rule would allow Class "C" and "D" raffle license holders to do that as well if they have a discount scheme that's set up prior to the sale of the tickets and the discounted tickets are bundled into booklets and then the booklets are labeled with the nature of the schemes, so that they can account for them and audit the raffle properly.

**Commissioner McLaughlin** asked if someone buys \$5 worth of tickets, would they get an extra ticket. **Ms. Tellefson** said that was correct and it would save on a number of the tickets in the booklet and then the price for buying a booklet. She said there was a change from the time that the agenda went out and she apologized for not having it summarize, but they just got it done prior to the Commission meeting. The staff changed language in a different section and they just moved it to apply to the proper section. There are no substantive changes. These are just separate filings. The second rule involves members-only raffles. There is a change between the time that this was sent out to the Commission, as well. The one substantive change is that original proposal allowed for individual tickets to be sold for \$5 and after discussion with staff and comments, they feel more comfortable with \$2 limit on the members-only raffle tickets. The staff recommends filing of these two proposals

for further discussion with the changes that are noted in the buff colored copies.

**Commissioner McLaughlin** asked if there should be public comment. **Ms. Tellefson** said usually public comment is taken to find out if anyone objects to filing, but they are not limited to that if they want to take more comment.

**Commissioner Heavey** moved to file the rule. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with five aye votes.*

#### **PRICING RESTRICTIONS ON SALE OF GAMBLING EQUIPMENT**

Amendatory Section WAC 230-12-330 – Availability of gambling equipment and related products and services – Prices – Contracts – Discounts – Restrictions – Exceptions

**Ms. Tellefson** said this is up for discussion and possible filing. It is a housekeeping change. The rule was before the Commission in the fall, and the Commission voted to delete a provision. The staff failed to make the deletion, so they are bringing it back to procedurally get this handled consistent with the Commission's intent. Staff recommends filing.

**Commissioner McLaughlin** opened the meeting for public comment regarding the filing of this rule. No one came forward.

**Commissioner Ludwig** moved to file the proposed rule for further discussion. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with five aye votes.*

#### **PETITION TO AMEND RAFFLE RULES BY RANCE ROCK**

Amended Section WAC 230-30-335 – Members-Only Raffles – Procedures – Restrictions  
Amended Section WAC 230-08-070 – Raffle Records

**Ms. Tellefson** said the petitioner has withdrawn this petition.

#### **SERVICES SUPPLIER RULES**

**Ms. Tellefson** said the staff requests that a specific provision be added to the agenda having to do with the service supplier rules after significant discussion in the study session. **Director Bishop** said he handed out copies to all of the participants that were in the audience at the time and additional copies on the back table. **Ms. Tellefson** said the Commission was being asked to address issues that had arisen since the service supplier package passed in November. Small individuals, mostly individuals who would fall under the category of a service supplier, are those who handle "dead-game" services or pull tab series that are pulled from play. The Commission rules require that these pull tabs be stored for a period of up to four months in some circumstances so licensees need to do something with these pull tabs. There are services for individuals who will pick up the games, store them, and then provide counting and some limited record-keeping services for them. These individuals don't typically have anything to do with the management or operation of the pull tab games; they don't give advice. Most of them operate out of their homes.

**Ms. Tellefson** said the staff has received a lot of comments since the last package was passed. These individuals have complained that it is not fair that they should be held to this standard. In the discussions in the study group, one suggestion was to delay implementation of the whole package. On the other hand, they didn't want to do that because those who actually are providing advice and have a significant part of the management of these card rooms specifically should be licensed; the agency should know who they are and they should qualify to be involved.

**Ms. Tellefson** said the staff have set forth an alternative proposal to request the Commission to file today as a regular rule, which would just exempt those who are only involved in limited record keeping, storage and counting types of services. The feedback that they got is that a lot of these people earn minimal money, they're not a

business, they didn't have to put up capital to start their business, and they're working out of their home. What the staff would be looking for in the future is to have these individuals register with the agency to know who they are so if there is a mistake or issues with the way the record keeping was conducted, they know who has been involved. But it would be a lesser type of situation – not a full license.

**Commissioner McLaughlin** said her understanding of what had been said was that the gambling services supplier rule would go in effect; however, the Commission would delete or take out the individuals who provide non management or advice at this time. **Ms. Tellefson** said the gambling service supplier rule is in effect now and what the staff would be filing is for a specific exemption from licensing for those individuals. Assistant Attorney General Jon McCoy looked at the Administrative Procedures Act and said normally there is a pre-notice requirement.

**Mr. McCoy** said there is an exception to the notice requirement when the change relates to "a filing or related process requirement for applying for an agency license or repealing that provision." He said this provision seems to fall within that exception since they are repealing the application process for these particular individuals. That would take it out of the normal requirement for pre-notice filing. He also looked at the issue of the Commission's authority to suspend application of the rule in anticipation of a repealer. He said there is case authority (which he did not have) that allows the Commission, when it anticipates repealing a rule that applies to somebody, to suspend application of that rule to those individuals until the final action has taken place. This is sort of a second step because right now the rule does apply to these individuals and, in order for a rule not to be implemented against them, essentially there would be some kind of an action to suspend application of the rule until such time as determination is made on the final action to repeal it.

**Commissioner McLaughlin** asked if they know about these people if they exempt them. **Ms. Tellefson** said they were aware of quite a few of them. **Commissioner McLaughlin** wondered if these people would have to let the Commission know they are in business if they are exempted in this manner. **Ms. Tellefson** said that would not be required under the current rule before them, but staff would be drafting an alternative proposal to have them register with the Commission. **Commissioner McLaughlin** said that was all she was concerned about because she thinks it is important that the Commission knows what they're doing.

**Commissioner Heavey** wondered why they needed these people to register. He wondered why they couldn't just be asked who does their bookkeeping. **Director Bishop** said that would be an alternative, that he had considered putting the burden on the operator to report who it is. He is concerned about their qualifications. That was the reason why he was leaning toward registering to give the staff an opportunity to check.

**Commissioner Heavey** said if he hired an incompetent lawyer, and that incompetent lawyer cost him a lot of money, his remedy is to go after the incompetent lawyer. He said it seemed that is the same thing they are talking about. If they hire incompetent people, that's their problem. As long as the staff has the ability to examine and to review the records and when they check on them and find out the person who has been doing it is incompetent, then they fine the operator who hired the incompetent person. **Director Bishop** said competence of the work is not an issue for the Commission. Whether the person should be qualified to be involved at this level in gambling and specifically having the ability to store the devices, staff's concern is that they do not want "Al Capone storing pull tabs," and so, therefore, they feel they need to know who these people are and have some formal method of saying, "No, Al can't store your pull tabs; he's not registered with the state as a qualified person."

**Commissioner Heavey** said that would mean that staff would have to do an examination of their qualifications. **Director Bishop** said that would be what they would be doing. **Commissioner Heavey** said they would be doing it for free because they don't have to pay a license. **Director Bishop** said that would not be the case because anyone who registers will be required to pay a fee, but just not as high as \$575, which is what the big deal is about now.

**Commissioner Forrest** said he would not want that drafted in such a way that the operator can say it is not his responsibility. They must be sure that the operator remains responsible for the proper disposition of those tabs. It does no good for the Commission staff to chase somebody who put them in their back yard and didn't burn them up. The Commission wants to be able to hold the operator responsible. He thought a simple way of putting

it would be to say that any operator who chose not to dispose of them himself will be required to furnish the Commission with the current name and address of whoever is going to do it. That might get the same thing done.

**Mr. McCoy** said that one of the things that having a formal control requirement over these particular individuals would do would be to give the Commission authority to go after those records where they are rather than having to do it through some judicial process. Keeping positive control over the product.

**Director Bishop** said that was another concern of the staff. Right now some of these people may even reside in Idaho and may have stored some of these tabs and have the records in Idaho and then staff would be outside of their own jurisdiction as far as getting legal authority on them. That was another reason for getting some sort of hold on the individual. But they may be able to get around that by adding words that records must be disposed of in Washington.

**Commissioner Ludwig** wondered if they had solved the problem of somebody who performs management-type services on a very limited or small basis and, again, having that \$575 being a burden to either the service provider or the operator he's helping. He was thinking that if he had a brother or friend that had a license and offered to help him just one day a week or one day a month, he would be under the rule. If he were going to pay him for that one day, he'd have to pay an additional \$575. **Director Bishop** said he would also have the option of making him an employee. If he was his employee, then he wouldn't have to be a separate business. That cures everybody's problem and should not be a consideration.

**Commissioner Ludwig** wondered if there might be somebody out there that would fit into that category.

**Director Bishop** said that is possible, but he felt that once someone sets themselves up in business to provide management services to a licensee that they require a license. **Commissioner McLaughlin** said in Commissioner Ludwig's example, he would just be doing his brother a favor and he would give him some pocket change.

**Commissioner Heavey** asked if an individual could be employed by more than one licensee. **Director Bishop** said that was correct. **Commissioner Heavey** asked if they served five different people on five different days, could they be an employee of each one of those five people? **Commissioner Ludwig** said they would have to be licensed. **Director Bishop** said that in that situation, the operator's license fee has to take care of all of the employees as far as any examination. There's also specific authority under the statute that allows the Commission to have the ability to prohibit certain individuals that are unsuitable from being employees in a gambling activity.

**Commissioner Heavey** said his question was that if he's going to work for a friend one day a week and Director Bishop says he doesn't need a license, just become an employee for one day a week, that solves that problem of the \$575 fee. So, if he has five friends who have five card rooms and they all want him to help out because he has such great expertise, he could become an employee of each one of those five people. There's no prohibition against that so he would not have to pay out for a \$575 license. **Ms. Cass-Healy** said he may be required to be licensed as a card room employee or a commercial gambling manager, but he could work for more than one.

**Director Bishop** said the operator themselves would have to take care of all of the employee requirements for each employee and they don't want to have employees; they'd rather contract this work if they could.

**Commissioner McLaughlin** asked if this was for filing. **Ms. Tellefson** said yes staff was recommending filing for further discussion – just filing it as a regular rule, that's WAC 230-02-205

**Director Bishop** said he would like comment for the record regarding putting a hold on implementing this part of it as Mr. McCoy related to. He could then put the licensing of these people, this particular set, on hold pending completion.

**Commissioner McLaughlin** called for public comment regarding the filing of this exemption. No one came forward.

**Commissioner Heavey** moved to file the rule and that they establish a moratorium on licensing the individuals

that would come under new paragraph 2C until they take final action on the rule.

**Commissioner Herbold** seconded the motion and asked if this were for filing a new rule or exception to the original rule. **Ms. Tellefson** said it was an amendment to the existing rule.

**Acting Chairman McLaughlin** asked if there were any other questions or comments.

*Vote taken; motion carried with five aye votes.*

#### **COMMENTS FROM PUBLIC OR PUBLIC OFFICIALS OR BOTH/GENERAL DISCUSSION**

**Commissioner McLaughlin** called for any public comment. No one had any comments. She called for executive session.

Public meeting recessed.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green  
Executive Assistant